

ACCOMACK COUNTY WETLANDS MINUTES OF JANUARY 27, 2022

At a meeting of the Accomack County Wetlands Board held on the 27TH day of JANUARY 2022 in the Accomack County Administration Building Board Chambers, Room #104, in Accomac, Virginia.

1. CALL TO ORDER

MEMBERS PRESENT AND ABSENT

Wetland Board Members Present
Mr. Earl Frederick, Chairman
Mr. George Ward, Vice Chairman
Mr. Gene Wayne Taylor
Mr. T. Lee Byrd
Mr. Timothy Getek

Others Present:

Mr. G. Christian Guvernator IV, PE, Director Environmental Programs
Ms. Chontese Ridley, Environmental Programs Permit Specialist
Mr. Benjamin Nettleton, Virginia Marine Resources Commission (VMRC)
Mrs. Beth Nunnally, Environmental Planner II

DETERMINATION OF A QUORUM

There being a quorum, Chairman Frederick called the meeting to order at 10:00 a.m.

2. ADOPTION OF AGENDA

Mr. Frederick pointed out to the board members that Ms. Ridley had handed out a revised agenda. There was something new was added under “Other Business” on the agenda.

On a motion made by Mr. Taylor and seconded by Mr. Ward, the Wetlands Board voted to approve the agenda as presented.

3. ELECTION OF THE 2022 WETLANDS BOARD OFFICERS

The Wetlands Board will elect the Chairman and Vice-Chairman for 2022

Mr. Chris Guvernator, Environmental Programs, was sworn in by Chairman Frederick.
Mr. Guvernator opened the floor for nominations for Chairman of the Wetlands Board:

Mr. Taylor moved, seconded by Mr. Byrd, to nominate Mr. Frederick as Chairman for 2022. No other nominations were made. Mr. Guvernator closed the floor for nominations.

Mr. Guvernator called for a vote and the Wetlands Board voted unanimously to elect Mr. Frederick as Chairman of the Wetlands Board for 2022.

Mr. Frederick opened the floor for nominations for Vice-Chairman of the Wetlands Board:

Mr. Getek moved, seconded by Mr. Byrd, to nominate Mr. Ward as Vice-Chairman for 2022. No other nominations were made. Mr. Frederick closed the floor for nominations.

Mr. Frederick called for a vote and the Wetlands Board voted unanimously to elect Mr. Ward as Vice-Chairman of the Wetlands Board for 2022.

4. MINUTES

A. November 18, 2021

On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to approve the November 2021 minutes.

B. December 23, 2021

On a motion made by Mr. Getek and seconded by Mr. Ward, the Wetlands Board voted to approve the December 2021 minutes.

5. OLD BUSINESS

A. McNure Restoration

Mr. Guvernator said within in a week of the last meeting he received a call, from the landlord related to this saying he was going to clean up everything in the tidal area so nothing would flush back into the bay. He added that he did not go out to do any immediate inspection to see if that was the case, but the agent indicated that he cleaned up everything.

Mr. Guvernator said he had a photo from two days before this meeting that show additional debris in and around the same area. However, Mr. Guvernator said it might have been associated with a storm between the time Mr. Britton said he cleaned it up and the time the pictures were taken.

Mr. Guvernator said the board needed to make a decision on whether or not they want to pursue further action or deem that the restoration is complete and close it out.

Mr. Taylor suggested to Mr. Britton to take photos before and after next time. He also thanked him for getting it done. Mr. Getek said some of the debris could have come from next door, but that it was an improvement.

Mr. Britton said that the McNures' said they were not doing anything to the property.

Mr. Raymond Britton, Jr., (BIC, Inc.), appeared before the wetlands board and was sworn in by Chairman Frederick.

CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Frederick asked if there was anyone who wanted to comment on the McNure Restoration.

No one made a request to communicate.

CHAIRMAN FREDERICK CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Frederick said when he went out to the site everything was cleared out of the intertidal zone. He then asked Mr. Guvernator to show the photos that he had taken from two days prior, the 25th. Mr. Taylor asked Chris if he could bring the 2020 photos to the next meeting.

Mr. Frederick questioned Mr. Britton about the McNure's saying they were not doing anything. Mr. Britton said the McNure's stated they were so disgusted with VMRC that the commission could have the property.

Mr. Byrd asked to confirm that the McNure's were saying they were letting the property go, and for someone else to worry about it. Mr. Britton confirm that was correct.

Mr. Byrd asked what options did they, (the board), have. Mr. Nettleton said they cannot compel a person to do anything, but the neighbors could sue.

A discussion ensued.

Mr. Getek asked if there was going to be any action.

Mr. Taylor said Mr. Britton did the work and he believed the violation was complete.

Mr. Byrd agreed, but was bothered by the erosion that was going to continue to happen.

Mr. Guvernator said it was staff's suggestion to consider a motion on whether the restoration order had been satisfied or if additional action was necessary.

CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Frederick asked if there was anyone who wanted to comment on the McNure Restoration.

No one made a request to communicate.

CHAIRMAN FREDERICK CLOSED THE FLOOR TO PUBLIC COMMENT

On a motion made by Mr. Taylor and second by Mr. Getek, the Wetlands Board voted the McNure Restoration had been satisfied.

B. Blue Camp Inlet View LLC VMRC# 2021-2371

Mr. Guvernator said he believe this JPA was continued until this meeting. The public comment for this application had already been opened and closed.

Mr. Guvernator stated he received word from the applicant's agent that he would like to continue this until he receives review and approval from the Corps of Engineers. The agent is expecting that there will be some revisions. If the revisions are minor there will be no problem continuing, but if they are significant an additional public hearing will have to be held.

The agent is asking for this to be continued until he contacts Mr. Guvernator to ask for it to be put back on the agenda.

Mr. Guvernator said staff's suggestion is that the board consider some length of time for it to come back. If it is dormant for too long the field conditions might change.

A discussion ensued.

On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to approve the extension as presented, (waiting for approval from the Corps of Engineers), for Blue Camp Inlet View LLC VMRC# 2021-2371, proposed installation of a 175 foot long by 10 foot wide community campground multiuser pier to a 24 foot wide by 100 long "T" platform. The property is located on Chincoteague Island, VA 23336, tax map#(s) 45-A-2.

6. NEW BUSINESS

A. Julie Burke VMRC#2021-2389

Mr. Guvernator gave a summary of the project.

Mr. Getek said he had a question for Mr. Nettleton.

Mr. Benjamin Nettleton, (VMRC), appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Getek asked if the board was hearing this application because there were impacts to subaqueous bottom. Mr. Nettleton said he believe it was due to impacts to non-vegetated wetlands for some of the backfill.

Mr. Guvernator added that there was an area of the Wetlands Board's jurisdiction behind the existing bulkhead.

Mr. Raymond Britton appeared before the Wetlands Board on behalf of the applicant.

Mr. Britton gave a summary of the project and said he did not think there was any vegetation. (90 square feet of non-vegetated)

Mr. Frederick question Mr. Britton about him wanting to move the bulkhead 2 feet out. Mr. Britton said the one on the right would have to be replaced shortly. He added that the bulkhead on the left would need to be replaced too.

Mr. Britton said he puts them 2 feet out he makes sure there is a connection there to hook the next one to so there are no leaks.

CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Frederick asked if there was anyone who wanted to comment on VMRC# 2021-2389.

No one made a request to communicate.

CHAIRMAN FREDERICK CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Getek asked if the reason why a Living Shoreline was not proposed/being avoided was due to it being on a canal and possibly affecting navigation. The answer was yes.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to issue a permit (valid for (1) year), for Julie Burke VMRC#2021-2389, proposed construction of a new bulkhead 2 feet in front of the existing. The property is located in Greenbackville, VA 23356, tax map#(s) 5A1-1-935.

**B. Captain Fish's Steaming Wharf VMRC# 2021-2461
Chincoteague Island, VA**

Proposed repair to 30 square feet of an 400 feet wall

Mr. Guvernator gave a quick summary of the project, and added that there were some oyster beds that should probably be relocated.

Mr. Frederick asked why this application was not allowed as an emergency. Mr. Nettleton said there were two reasons:

1. It was more than 30 days
2. There was more than 30 square feet of impacts.

Mr. Nettleton explained more by saying there could only be 1 square feet of impacts per running linear foot.

Mr. Frederick asked if there had to be a structure on the property that was threatened. Mr. Nettleton said it does say something like that, but it was a little more discretionary.

A discussion ensued.

Mr. Raymond Britton, Jr., (BIC, Inc.), appeared before the board on behalf of the applicant. Mr. Britton when over the project description stating there was storm damage to the bulkhead before October 29, 2021. He also added that the wooden return was gone.

CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Frederick asked if there was anyone who wanted to comment on VMRC# 2021-2461.

No one made a request to communicate.

CHAIRMAN FREDERICK CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Getek asked if the bulkhead was going to be repaired in line. Mr. Britton said it would be line with what was there and that he was putting the return back in. He also added that he would be putting fill behind the bulkhead.

Mr. Frederick asked Mr. Guvernator about the potential oyster beds he spoke of earlier in the meeting. Mr. Guvernator said they were behind the bulkhead and would be displaced by the work. Mr. Britton said the shells came from the parking lot.

Mr. Getek asked to confirm that the reasoning for not doing a Living Shoreline was due to the fetch.

On a motion made by Mr. Taylor and seconded by Mr. Ward, the Wetlands Board voted to issue a permit (valid for (1) year), for Captain Fish's Steaming Wharf VMRC# 2021-2461, proposed repair to 30 square feet of an 400 feet wall with the following conditions:

- 1. Transplant any live oysters where they need to go*

The property is located on Chincoteague Island, VA 23336, tax map#(s) 45-A-6.

C. Paul Bucklin VMRC# 2021-2470

Greenbackville, VA

Proposed repair and replacement of the existing bulkhead

Mr. Guvernator went over the project description.

Mr. Ward asked if this was considered a repair. Mr. Guvernator said he considered it an in place replacement.

Mr. Britton said the Wetlands Board approved it for an emergency permit, but VMRC denied it and he had to apply through the regular JPA process.

Mr. Britton stated this damage came for a storm on October 29, 2021.

Ms. Beth Nunnally was sworn in by Chairman Frederick.

Mr. Guvernator showed photos of the property.

Mr. Paul Bucklin was sworn in by Chairman Frederick.

CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Frederick asked if there was anyone who wanted to comment on application 2021-2470.

No one made a request to communicate.

CHAIRMAN FREDERICK CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Getek asked to confirm that this was not a place for a Living Shoreline due to the fetch. Mr. Britton said yes it was a rough place.

Mr. Getek asked Mr. Nettleton what was the exact reason this was turn down. Mr. Nettleton said it was an administrative rejection of the permit. The impacts were greater than one square foot behind the bulkhead. It did not qualify.

A discussion ensued.

Mr. Byrd asked about the square footage of phragmites on site. He asked if they were in agreement that the 80 square feet of impacts would be covered. Mr. Bucklin did not understand and Mr. Byrd explained it to him.

Mr. Getek asked where it was located and Mr. Nettleton said it was on the south side.

On a motion made by Mr. Getek and seconded by Mr. Byrd, the Wetlands Board voted on a one month continuance for Paul Bucklin VMRC# 2021-2470, proposed repair and replacement of the existing bulkhead with the following conditions:

1. Pay for 80 square feet of impacts

The property is located in Greenbackville, VA 23356, tax map#(s) 5A1-1-764.

D. Tom Gajewski VMRC# 2021-2531

Greenbackville, VA

Construction of a new bulkhead (previously approved as 2020-0231)

Mr. Guvernator gave some background information on the project. He also passed out the minutes and slideshow from when the board permitted it in June 25, 2020. In addition Mr. Guvernator said it same alignment and there was no vegetated wetlands.

Mr. Guvernator also gave the board members the photos from 2020.

Mr. Raymond Britton, Jr., (BIC, Inc.), appeared before the Wetlands Board on behalf of the applicant.

Mr. Britton also wanted to give the board some background information. He said he contacted the applicant to let them know the permit was going to expire soon, and that they needed to get a contract signed with him to get the work done before the permit expired.

Mr. Britton said he told the applicant all they would need to do was get an extension. The applicant agreed.

Mr. Britton said he sent a building permit application to the County on June 5th or 6th of 2020. After a couple of weeks there was no response and they sent another application. Still there was no response.

Mr. Britton said if the Building Department had responded in a timely fashion the job would had been done.

Mr. Byrd asked if anyone knew why there was no building permit.

Mr. Guvernator said he believed that the Building Department mishandled the initial submittal.

A discussion ensued.

CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Frederick asked if there was anyone who wanted to comment on application 2021-2531.

No one made a request to communicate.

CHAIRMAN FREDERICK CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Taylor asked if the applicant was charged another application fee. Mr. Guvernator said yes.

Mr. Guvernator said he if the building permit application was submitted when Mr. Britton said it was submitted, there were only two months left before the permit would have expired. Mr. Guvernator was not sure if it could have even been constructed in that time.

Mr. Guvernator said that if someone requests a refund of the application money he could get executive approval to refund the portion that was associated with the advertisement for this application, which is a cost that the county occurred. However, he said the application fee could definitely be refunded.

Mr. Byrd said that should be in the motion.

Mr. Getek said he thought he seen some spartina patens along the shoreline. Mr. Nettleton confirmed that was right.

Mr. Getek asked Mr. Nettleton if they were vegetated wetlands within the board's jurisdiction. Mr. Nettleton said that he seen it and would not recommend mitigation.

Mr. Byrd asked if there were any vegetated wetlands. The answer was no.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted on a one month continuance for Tom Gajewski VMRC# 2021-2531, proposed construction of a new bulkhead with the following conditions:

1. Refund the previous application and advertising fee for JPA# 2020-0231

The property is located in Greenbackville, VA 23356, tax map#(s) 5A1-1-799.

6. OTHER BUSINESS

A. Emergency Permit Process

Mr. Governator said there was a question at the last meeting about previous County staff handling emergency type projects in house, and then notified the board that an emergency permit had been issued.

Mr. Governator said he spoke with the County Attorney, and looked through the state regulations. There was nothing in the county regulations that allowed that or in the state regulations.

Mr. Governator said it specifically state in **4VAC20-345-40 Procedures, Section C:**
The Board Chair, or Vice-Chair in his absence, is empowered to issue the general wetland permit upon a finding by the local wetlands board

Mr. Governator added that they could not find any provision that allowed County staff to make an emergency determination independent of the Wetlands Board.

Mr. Nettleton said the Chairman could do it without the rest of the board members.

A discussion ensued.

1. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, February 24, 2022 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

2. ADJOURNMENT

On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted to adjourn the meeting.

The meeting was adjourned at 11:35 a.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist